

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA**

IN RE:)
C&S AG, LLC) Case No. BK 24-40200
Debtors.) Chapter 12

IN RE:)
C&S ORGANICS, LLC) Case No. BK 24-40201
Debtors.) Chapter 12

IN RE:)
STEPHANIE OSBORN and) Case No. BK 24-40202-BSK
COLTON OSBORN)
Debtors.) Chapter 12
) Jointly Administered Under
) Case No. Bk 24-40202

MOTION TO CONDUCT RULE 2004 EXAMINATIONS

Stockmens Bank (the “Bank”) by and through its attorneys, John O’Brien of Spencer Fane LLP, moves the Court for an order allowing it to conduct Rule 2004 examinations in these jointly administered cases filed by Colton Osborn, Stephanie Osborn, C&S Ag, LLC and C&S Organics, LLC (collectively, the “Debtors”).

As set forth below, the Bank is requesting permission to obtain interrogatory answers and documents from one or more of the Debtors and examine one or more of the Debtors.

In support of this motion, the Bank states as follows:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. Consideration of this motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicate for the relief requested herein is FED. R. BANKR. P. 2004.

2. As of March 8, 2024, three of the Debtors jointly and severally owe the Bank not less than \$666,600.77 plus ongoing interest and reimbursables (the “Indebtedness”).

3. To secure the Indebtedness, Debtors granted the Bank a blanket security interest in equipment subject to senior purchase money security interests in certain equipment. The Bank has a first priority security interest in some of the Debtor’s equipment, and a second priority security interest in the remaining equipment which is the subject of third parties’ PMSI’s (the “Equipment Collateral”). The Bank also has a lien on eleven motor vehicles (the “Motor Vehicle Collateral”). The Bank also has first and second priority Deeds of Trust on the Debtor’s residence.

4. Pre-petition, Debtors defaulted on their obligations owed to the Bank.

5. At the meeting of creditors the Debtors indicated that some of the Equipment Collateral pledged to the Bank is no longer in the Debtors’ possession. But the Debtors did not provide details. The Debtors stated after the meeting of creditors they would provide to the Bank’s counsel a list of Equipment Collateral that has been sold or transferred. Despite numerous follow up requests after the meeting of creditors the Debtors have not provided any additional information to the Bank. Therefor formal discovery is needed on the current state of the Bank’s Equipment Collateral.

6. Bankruptcy Rule 2004 provides that, upon a motion of a party in interest, the Court may order the examination of any entity concerning “the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate, or to the debtor’s right to a discharge.” FED. R. BANKR. P. 2004(b).

7. Bankruptcy Rule 2004 is intended to give parties in interest an opportunity to examine those persons possessing knowledge of a debtor’s acts, conduct or financial affairs and provides “all interested parties with a mechanism for the investigation and reconstruction of the

debtor's affairs." *In re Isis Foods, Inc.*, 33 B.R. 45, 46 n.2 (Bankr. W.D. Mo. 1983) (citation omitted).

8. "Rule 2004 allows the court to authorize the examination of any entity on the motion of any party in interest. Fed. R. Bankr. P. Rule 2004(a). The scope of such an examination is quite broad, relating to just about anything that deals with the debtor's actions, assets, liabilities or financial affairs, its right to a discharge, or any matter affecting the administration of the bankruptcy estate. Fed. R. Bankr. P. Rule 2004(b). It can be as simple as where are the keys to the filing cabinet or as complex as what happened to the money? It may also be used to examine 'creditors and third parties who have had dealings with the debtor.'" *In re Sheetz*, 452 B.R. 746, 747-48 (Bankr. N.D. Ind. 2011) (citing *Matter of Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985)).

9. The attendance for examination and for the production of documents may be compelled as provided in Bankruptcy Rule 9016, which incorporates Federal Rule of Civil Procedure 45 into cases under the Bankruptcy Code. *See* FED R. BANKR. P. 2004(c).

10. The Bank is an interested party entitled to conduct Rule 2004 examinations to investigate the "acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." FED. R. BANKR. P. 2004(b).

11. In order to hold effective examinations, the Bank requests Debtors be required to answer the interrogatories and produce the documents and information listed on **Exhibit A** attached hereto and incorporated herein by reference within 14 days of the date of this Court's order granting this motion. Additionally, the Bank requests that Debtors be required to appear for their Rule 2004 examinations within 21 days of the date of this Court's order granting this motion.

WHEREFORE, the Bank requests that the Court grant its motion and enter an order providing that:

- A. The Debtors, and each of them, are required to answer the interrogatories and produce the documents set forth on Exhibit A attached hereto to the Bank's counsel within 14 days of the date of this Court's order;
- B. The Debtors, and each of them, are required to appear for a Rule 2004 examination by Zoom or at the law office of Debtors' counsel – or such other location as the Bank and Debtors may agree – within 21 days of the date of this Court's order; and
- C. The Bank be granted such other and further relief as is just and equitable.

DATED May 14, 2024.

Respectfully submitted,

SPENCER FANE LLP

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Attorneys for Stockmens Bank

EXHIBIT A

Definitions

Osborn Parties – The term “you” or “Osborn Parties” shall mean Colton Osborn, Stephanie Osborn, C & S Organics, C & S Ag, LLC and/or Osborn Land & Cattle, LLC.

Correspondence – The term "Correspondence" shall include any and all emails, text messages, letters, notes, instant messages, social media messages or communications (i.e. Facebook or Instagram), faxes, memorandums, transcripts or notes of telephone or in person conversations, and any other notation, electronic or otherwise, conveying any type of communication.

Documents – The term "Documents" shall mean, without limitation, the following items, whether printed, written, or produced by hand: all original written recorded, or graphic matters whatsoever and all non-identical copies, thereof, including but not limited to, bills of sale, invoices, contracts for sale, checks, payment receipts, transportation records, papers, books, records, letters, photographs, slides, tangible things, correspondence, communications, telegrams, cables, telex messages, memoranda, notes, notations, work papers, transcripts, cables, minutes, reports and recordings of telephone or other conversations, or of interviews, or of conferences, or of other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, bulletins, notices, announcements, advertisements, instructions, charts, manuals, brochures, publications, schedules, price lists, client lists, journals, statistical records, desk calendars, appointment books, diaries, lists, tabulations, books of account, receipts, records and invoices reflecting business operations, sound recordings, computer print-outs, “Web Sites” on the “Internet,” “e-mail” communications, all records kept by electronic or intangible means, photographic means or mechanical means, any notes, computer print outs, books of account, receipts, records and invoices reflecting business operations, all records kept by electronic, photographic, or mechanical means, any notes or drafts relating to the foregoing, and all things similar to any of the foregoing. In all cases where originals are not available, “Document” also means identical copies of original Documents and non-identical copies thereof.

INTERROGATORIES

1. Attached hereto as Exhibit 1 is a list of equipment and motor vehicles (the “List”). With respect to the List:
 - A. Do you still have in your possession all of the equipment and motor vehicles stated on the List?
 - B. If not, for each item on the List (hereafter, an “Item”) please provide the following information:
 - (1) What happen to the Item?
 - (2) What is the name and address of the person to whom you gave possession of the Item?

- (3) When did you allow the Item to leave your possession?
- (4) Why did you allow the Item to be transferred from your possession?
- (5) Describe any payment, trade-in allowance or any other consideration you received for each Item.
- (6) What is the current location of the Item?
- (7) Describe all Documents related to or concerning the transfer of the Item.

2. Have you transferred, sold, traded or disposed in any equipment or motor vehicles after January 1, 2020? For each such transfer or disposition:

- A. State why you made such sale, trade or disposition.
- B. State the name, address and telephone number of the transferee.
- C. State the date of the disposition.
- D. Describe the payment, trade-in allowance or other consideration you received.
- E. State if your transferee subsequently transferred the Item.
- F. State the current location of the Item.
- G. Describe all of the Documents concerning the sale, trade or disposition of each Item.

REQUEST TO PRODUCE

1. Please produce all Documents You described in Your interrogatory answers.
2. Please produce all Documents concerning or related to transfers, sales, trade-in, disposition of any of your equipment or motor vehicles from January 1, 2020 to the present.

| SCHEDULE I: Investments in Vehicles, Machinery, Equipment, etc. | | | |
|--|-------------------------------|--------------|---|
| Description: Year, Make, Model, Serial #, VIN # | | Market Value | |
| Owned Equipment | | Prior Lien | UCC Date Filing Number |
| 7240 IHC Tractor (Serial #JJAA0068505) | | 40,000 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| 1945 IHC H-Tractor | | 2,000 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| 475 IHC Disk (Serial #0470000J012863) | | 1,000 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| Hawkins Ridger 8'36 - 8 row | | 1,500 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| Hawkins Ridger 4'36 - 8 row | | 1,500 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| Evergreen Ditcher | | 750 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| Pivot Track filler | | 35,000 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| Leon 3100 Blade (Big Ox) (Serial #624302) | | 3,000 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| 8 ft. Flat Out dirt scraper | | 3,500 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| Rhino Ditch Mower 3 point (Serial #13900) | | 1,000 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| Sickle Mower | | 1,500 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| 1071 Westfield Auger | | 2,500 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| Yellow 6' sugar w/motor | | 500 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| Pivot 7 Tower Laines/Winquist/Nelson | | 55,000 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| 3 IR Surge Valve 10" | | 1,200 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| Set back for Pivot | | 500 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| Kelly Feed Wagon 5x12 | | 500 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| 3 - propane tanks | | 500 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| 4 - Generators | | 200 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| Air Compressor - portable | | 1,200 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| Miller Welder | | 650 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| Big Red Fuel Wagon | | 1,200 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| 1981 Old Blue | | 3,000 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| Polaris ATV - newer green | | 750 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| 2006 Polaris A06LD27AB All Terrain | | 2,500 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| | | 2,500 | Osbom Land & Cattle 4/29/2019; 9819109405-2 |
| | | | |
| 7140 Case Magnum Tractor with Loader (Serial #JUA0029161) | | | |
| John Deere 9400 Tractor (Serial #RW9400H041386) | | 40,000 | Stockmens 3/18/20; 9820177911-0 Blanket; |
| Case Magnum 7250 | | 70,000 | Stockmens 3/27/20; 9820179814-6 Blanket; |
| 1995 Case Magnum 8950 | | 40,000 | Stockmens 4/29/2020; 204001420-7 Blanket |
| 1981 IH 1068 (Serial #2610183J52326) | | 40,000 | Stockmens " " |
| 1068 IH Tractor (RESTORED) | | 10,000 | Stockmens " " |
| 2014 S-750 Skidsteer w/attachments (grapple bucket, rock bucket, forks, dirt bucket) (Serial #ATDZ14128) | | 15,000 | Stockmens " " |
| John Deere 544J Wheel Loader (Serial #DW544JZ611677) | | 50,000 | Stockmens " " |
| 2015 Brent 1282 Grain Cart (Serial #B33910104) | | 40,000 | Stockmens " " |
| 2019 JSM 1122 Grain Cart (Serial #1903817) | | 125,000 | Stockmens " " |
| John Deere 569 Round Baler | | 106,000 | Stockmens " " |
| H&S Hay rake | | 30,000 | Stockmens " " |
| Surfflower Disk - 37" (Serial #01434E20050187) | | 4,000 | Stockmens " " |
| John Deere 3 point Disk - 18" | | 45,000 | Stockmens " " |
| 2 - Rolling Cultivators - 50" | | 2,500 | Stockmens " " |
| JD 24" Disk Ripper | | 40,000 | Stockmens " " |
| JD 25" Disc Ripper | | 18,000 | Stockmens " " |
| K-Line Newcoed Cuickill (Serial #2995PA192324) | | 15,000 | Stockmens " " |
| 2016 Orthman 1 Tripper Strip T1 (Serial #031704) | | 130,000 | Stockmens " " |
| Unverfuth 32" Double Rolling Basket | | 90,000 | Stockmens " " |
| 225 Rowing Harrow | | 12,000 | Stockmens " " |
| Orthman Row Stalker - 8 row | | 18,000 | Stockmens " " |
| RC 25 Rhino Stalk Shredder (Serial #RC25-10184) | | 15,000 | Stockmens " " |
| 4720 XN Sprayer - 50ft boom (N04720X002864) | | 7,000 | Stockmens " " |
| 2019 Artex Manure SB800 | | 65,000 | Stockmens " " |
| 2018 Artex Manure SB800 | | 40,000 | Stockmens " " |
| 2019 Rhino Bal Wing Mower - 30" (Serial #41056) | | 40,000 | Stockmens " " |
| H13114 XT Harvest International Auger | | 15,000 | Stockmens " " |
| Westfield Auger | | 45,000 | Stockmens " " |
| Westfield 15-35FL Auger | | 1,500 | Stockmens " " |
| Brandt Auger 13x90 (Serial #6091706) | | 13,000 | Stockmens " " |
| H1 15' Bell conveyor | | 14,000 | Stockmens " " |
| Backhoe P51800 drive over belt conveyor | | 15,000 | Stockmens " " |
| 2018 Valley 8,000 Series Pivot | | 15,000 | Stockmens " " |
| 2019 Valley 7,000 Series Pivot | | 66,000 | Stockmens " " |
| 2010 Zimatic Center Pivot (Serial #L91530) | | 66,000 | Stockmens " " |
| (2) 1994 Valley Pivots | | 45,000 | Stockmens " " |
| Demco Saddle Tanks | | 10,000 | Stockmens " " |
| Demco Saddle Tanks | | 12,000 | Stockmens " " |
| Hooper Swinger | | 12,000 | Stockmens " " |
| 3 - 2600 Displays w/activation | | 6,500 | Stockmens " " |
| 2 - 2630 Displays | | 21,000 | Stockmens " " |
| 5 - Globes | | 14,000 | Stockmens " " |
| 2 - 5,000 gallon Schaben tanks w/pump | | 5,000 | Stockmens " " |
| 8 Loads of Irrigation Pipe | | 7,000 | Stockmens " " |
| 10 loads 8" pipe @ .40 ft | | 3,600 | Stockmens " " |
| 3 - Pipe Trailers | | 3,500 | Stockmens " " |
| (5) 3pt. Bale Mowers @ \$1,000 each | | 2,000 | Stockmens " " |
| (2) Surefire Pumps | | 2,000 | Stockmens " " |
| 2021 TC 18 Row 36" Tool Bar Custom Built Precision Planter | C & S AG, LLC | 160,000 | Stockmens PMSI 4/9/21; 9821265281-2 |
| H&S Hay Rake Ser#410788 | | 18,000 | Stockmens PMSI 6/8/20; 9820195612-8 |
| | Subtotal Owned Equipment>> | 1,488,050 | |
| | | | |
| FINANCED EQUIPMENT | | | |
| | | Market Value | Prior Lien |
| | | | UCC Date Filing Number |
| John Deere 8370 Row Crop | | 250,000 | John Deere 4/29/2020; 9820186125-4 |
| Orthman 16R36 Cultivator with Shields | | 50,000 | Ascendum Capital 6/3/2020; 9820194236-1 |
| John Deere 560 Round Baler | | 30,000 | John Deere 8/4/2020; 9820210450-4 |
| 2021 Reinken Center Pivot | | 154,000 | TCF 1/19/2021; 9821246849-3 |
| 2021 Reinken Center Pivot | | 154,000 | TCF 1/19/2021; 9821246849-3 |
| John Deere W225 Windrower/Swather | | 154,000 | John Deere 1/19/2021; 9821246849-3 |
| John Deere 644K Wheel Loader | | 160,000 | John Deere 2/1/2021; 9821246849-3 |
| John Deere 9560 Crawler Tractor | | 160,000 | John Deere 2/9/2021; 9821251630-7 |
| 2021 Reinken 7 tower pivot | | 170,000 | John Deere 4/11/2022; 9822363925-6 |
| 2021 Reinken 7 tower pivot | | 115,000 | TCF 5/13/2021; 9821273109-8 |
| Great Plains Drill | | 115,000 | TCF 5/13/2021; 9821273109-8 |
| Betzer 3554 Rotary Hoe | | 120,000 | John Deere 5/2/2023; 9723420467-7 |
| Sukup Grain Bin | | 35,000 | Yetter |
| Sukup Grain Bin | | 210,000 | M2 EQUIPMENT 3/29/2021; 2103001432-2 |
| | Subtotal Financed Equipment>> | 2,087,000 | M2 EQUIPMENT 2/09/2022; 9822330081-0 |
| | | | |
| | TOTAL EQUIPMENT>> | 3,575,050 | |

| Titled Vehicles | | MARKET VALUE | Prior Lien | UCC Data Filing Number |
|--|----------------|----------------------|------------------------|-------------------------|
| 2000 GMC Sierra K3500 Pickup 1GTHK34J8YR141083 | | 5,000 | Stockmens | 7013392551776: 8/24/21 |
| 2000 GMC Sierra K2500 Pickup 1GTHK24R1YR105540 | | | Stockmens | 7013393226776: 8/24/21 |
| 1997 Chevrolet K3500 Pickup 1GCHK34R5VF049769 | | 4,000 | Stockmens | 7013392218914: 8/24/21 |
| 1996 Chevrolet 2500 Dark Blue Pickup 1GCGK24F3T2131068 | | 2,500 | Stockmens | 7013393003396: 8/24/21 |
| 1998 GMC Sierra K2500 Pickup White 1G1GK24R9T2507699 | | | Stockmens | 7013392153354: 8/24/21 |
| 1990 Chevrolet 1500 Suburban 1GNEV16K8LF129368 | | | Stockmens | 7013392411824: 8/24/21 |
| 1987 GMC 2500 Pickup Black 1GTVY24K3H-J512632 | | 3,000 | Stockmens | 7013392411824: 8/24/21 |
| 1987 Chevrolet V10 Pickup Blue 1GCEV14K8HS125658 | | 3,000 | Stockmens | 7013392971056: 8/24/21 |
| 1987 Chevrolet Pickup Grey 1GCEV14H1HF391004 | | 3,000 | Stockmens | 7013392837639: 8/24/21 |
| Semi Trucks | | 3,000 | Stockmens | |
| 1988 Peterbilt 379 Truck 1XP5D29X1JD264097 | | | Stockmens | 70133929716123: 8/24/21 |
| 1991 Peterbilt 377 1XPCJD89K7MN306584 | | | | |
| 2011 Chevy 3500 | 12,000 | Stockmens | 7013392606552: 8/24/21 | |
| 2023 Polaris Ranger | 20,000 | Stockmens | 7013392605084: 8/24/24 | |
| 2008 Yamaha YZ250 FXW Motor Cross | 30,000 | | | |
| | 35,000 | | | |
| | 3,500 | | | |
| Trailers | | | | |
| PJ Flatbed tilt trailer - 18' | 7,000 | | | |
| Diamond Gooseneck Horse Trailer | 3,000 | | | |
| 10 Pipe Trailers @ \$2,000 a piece | | | | |
| 1988 Freight Haul Trailer 48' | 20,000 | | | |
| 16' Buck Dandy Trailer | 7,500 | | | |
| Dooner Trailer 53' | 4,000 | | | |
| | 18,000 | North Mill Equipment | | |
| Semi Trucks | | | | |
| 1996 Peterbilt 377 | | | | |
| 1994 Peterbilt 377 Truck | 20,000 | | | |
| 2015 Kenworth T800 | 12,000 | | | |
| 1984 International Cabover Truck | 40,000 | East Harbor | | |
| | 2,000 | | | |
| Totals | 244,000 | | | |

CERTIFICATE OF SERVICE

The undersigned certifies that on May 14, 2024 I served via CM/ECF system an electronic copy of the foregoing on all parties against whom relief is sought and those otherwise entitled to service pursuant to the Fed. R. Bankr. P. and the L.B.R. at the following addresses:

| | |
|------------------------|--|
| Andrew R. Biehl | abiehl@walentineotoole.com |
| Bradley D. Holbrook | bradh@jacobsenorr.com |
| Brandon R. Tomjack | btomjack@bairdholm.com |
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| Patrick Raymond Turner | pturner@turnerlegalomaha.com |
| Richard P. Garden, Jr. | rgarden@clinewilliams.com |

The undersigned further certifies that on May 14, 2024 a true and correct copy of the foregoing was served to the following by first class, postage prepaid U.S. Mail:

| | |
|---|--|
| Stephanie Osborn 42720 Road 763 Cozad, NE 69130 | Colton Osborn 42720 Road 763 Cozad, NE 69130 |
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|--|--|
| C&S Ag, LLC 42720 Road 763 Cozad, NE 69130 | C&S Organics, LLC 42720 Road 763 Cozad, NE 69130 |
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|--|--|
| Patrick Raymond Turner Turner Legal Group, LLC 139 S. 144 th Street #665 Omaha, NE 88010 | James A. Overcash James A. Overcash, Trustee 301 South 13 th Street, Ste 500 Woods Aitken LLP Lincoln, NE 68508 |
|--|--|

/s/John O'Brien

John O'Brien